TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1904.

No. [redacted] 10.

THE STATE OF SOUTH CAROLINA, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 18, 1904.

(19,274.)

(19,274.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 210.

THE STATE OF SOUTH CAROLINA, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Caption	1	1
Original petition filed in No. 22554	1	1
Amended petition in No. 22554	2	1
Original petition in No. 23100	5	3
Motion to consolidate Nos. 22554 and 23100	8	5
Original petition in No. 24085	8	6
Order to consolidate No. 24085 with Nos. 22554 and 23100	11	8
Traverse	11	8
Argument and submission	11	8
Findings of fact	12	9
Conclusion of law	19	17
Opinion of the court	19	18
Judgment	26	25
Application for appeal	27	26
Order allowing appeal	27	26
Clerk's certificate	28	26

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 28, 1904.

1 In the Court of Claims.

THE STATE OF SOUTH CAROLINA
vs.
THE UNITED STATES.
} Nos. 22554, 23100, and 24085, Consolidated.

I.—*Original and Amended Petition in No.* 22554.

The claimant filed its original petition on the 27th day of June 1901.

Subsequently, to wit, on the 13th day of September 1901, the claimant, by leave of court, in lieu of said original petition, filed its amended petition, which is as follows:

2 *Amended Petition.*

Filed September 13, 1901.

THE STATE OF SOUTH CAROLINA
v.
THE UNITED STATES.
} No. 22554.

To the honorable chief justice and judges of the Court of Claims:

The petitioner, The State of South Carolina, herewith files its amended petition, as follows:

I.

Your petitioner respectfully represents:

That by an act of the legislature of South Carolina, approved December 24th, 1892 with subsequent amendments thereto commonly known as the dispensary law, the sale of spirituous and malt liquors by private persons has been prohibited throughout said State since the 1st day of July 1893, when said act went into effect, and the authority to make sales thereof is confined exclusively to the State and county dispensers provided for by said act; said dispensers are, by said law, made the agents of the State for making sales of such liquors, which liquors are the property of the State, and the manner of sale is regulated by the said dispensary law; that the said liquors are sold by said dispensers only at appointed places in the State known and designated as dispensaries, and the proceeds of said sales belong to the State; that by said dispensary law the said dispensers were, and are, prohibited from making, and they have not at any time made, any sales of spirit-ous or malt liquors other than of those belonging to the said State, and that all the profits and losses arising from the said sales, accrue to the said State alone; that the said

dispensers were, and are, salaried officers of said State, and never had any proprietory interest whatever in said liquors, nor in the profits or losses accruing from said sales, and that their salaries have never depended upon the amount of sales made by them; that the said dispensers were and are the State's appointed agents or instrumentalities to carry out its dispensary laws, which laws have for their purpose the control and the minimizing, as far as practicable, of the evils of the traffic in spirit-ous and malt liquors throughout said State. That said State exercises said control under and by virtue of the police power. Petitioner further avers that neither said dispensary officials nor said State are liable to pay any taxes, special or otherwise, to the United States under the revenue laws thereof, either as wholesale or as retail liquor dealers, and that they were not at any time, nor are they now, liquor dealers within the meaning of said revenue laws.

3

II.

That, notwithstanding the premises, the United States collector of internal revenue for the State of South Carolina has for each and every year since, and including, the year commencing the 1st day of July, 1893, when said dispensary law first went into effect, refused to permit the said dispensers to make any sales of spirit-ous or malt liquors, as by the statutes relating to said dispensaries they were required to make, unless, and until, each and every of said dispensers paid to the United States the special tax of twenty-five dollars a year imposed by the revenue laws of the United States upon retail liquor dealers, and he further required the State dispenser to pay in like manner for each and every year a special tax of one hundred and twenty-five dollars, the said collector claiming that said State dispenser was a wholesale, as well as a retail, dealer in liquors; and your petitioner says that the said taxes were accordingly, and only because of said requirement, paid by the State dispenser for himself and for each and every of said dispensers to the said collector, the same being paid out of the funds of said dispensaries, which funds were, and still are, the property of the State of South Carolina. That said payments were made without the authority of any law of the State of South Carolina or of the United States, and were unauthorized by your petitioner; that the sums so paid to the collector of internal revenue as special taxes now amount to twenty thousand dollars, and that said money has been paid over by the said collector to the United States by its direction, and the same has been turned into its Treasury. Your petitioner accordingly avers that the money so paid by the said dispensers being the money of the State, paid as aforesaid, without its authority, and without being liable to pay the same, was had and received by the United States to the use of your petitioner, and the same is legally and equitably now due and payable to your petitioner by the United States.

4

Wherefore your petitioner demands judgment against the United States for the said sum of twenty thousand dollars.

FRANKLIN H. MACKEY, *Attorney.*

DISTRICT OF COLUMBIA, *To wit:*

Franklin H. Mackey, being first duly sworn, deposes and says that he is the attorney for the petitioner above mentioned and has read the foregoing and annexed amended petition by him subscribed, and that he knows the contents thereof; that the matters and things therein alleged upon his personal knowledge are true, and those stated upon information and belief he believes to be true.

FRANKLIN H. MACKEY.

Subscribed and sworn to before me this 13th September, A. D. 1901.

[SEAL.] ARCHIBALD HOPKINS,
Ch. Clerk Court of Claims.

5 II.—*Petition.*

Filed November 5, 1902.

In the Court of Claims of the United States.

STATE OF SOUTH CAROLINA
vs.
UNITED STATES. } No. 23100.

To the honorable chief justice and judges of the Court of Claims:

The petitioner, The State of South Carolina, herewith files its petition as follows:

I.

Your petitioner respectfully represents—

That by an act of the legislature of South Carolina approved December 24th, 1892, without subsequent amendments thereto, commonly known as the dispensary law, the sale of spirit-ous and malt liquors by private persons has been prohibited throughout said State since the 1st day of July, 1893, when said act went into effect, and the authority to make sales thereof is confined exclusively to the State and county dispensers provided for by said act; said dispensers are, by said law, made the agents of the State for making sales of such liquors, which liquors are the property of the State, and the manner of sale is regulated by the said dispensary law; that the said liquors are sold by said dispensers only at appointed

places in the State, known and designated as dispensaries, and the proceeds of said sales belong to the State; that by said dispensary law the said dispensers were, and are, prohibited from making, and they have not at any time made, any sales of spirit-ous or malt liquors other than of those belonging to the said State, and that all the profits and losses arising from the said sales accrue to the said State alone; that the said dispensers were, and are, salaried officers of said State, and never had any proprietary interest whatever in said liquors, nor in the profits or losses accruing from
6 said sales, and that their salaries have never depended upon the amount of sales made by them; that the said dispensers were and are the State's appointed agents or instrumentalities to carry out its dispensary laws, which laws have for their purpose the control and the minimizing, as far as practicable, of the evils of the traffic in spirit-ous and malt liquors throughout said State; that said State exercises said control under and by virtue of its police power. Petitioner further avers that neither said dispensary officials nor said State are liable to pay any taxes, special or otherwise, to the United States under the revenue laws thereof, either as wholesale or as retail liquor dealers, and that they were not at any time, nor are they now, liquor dealers within the meaning of said revenue laws.

II.

That, notwithstanding the premises, the United States collector of internal revenue for the State of South Carolina has for each and every year since, and including, the year commencing the 1st day of July, 1901, refused to permit the said dispensers to make any sales of spirit-ous or malt liquors, as by the statutes relating to said dispensaries they were required to make, unless, and until, each and every of said dispensers paid to the United States the special tax of twenty-five dollars a year imposed by the revenue laws of the United States upon retail liquor dealers, and he further required the State dispenser to pay in like manner for each and every year a special tax of one hundred and twenty-five dollars, the said collector claiming that said State dispenser was a wholesale, as well as a retail, dealer in liquors; and your petitioner says that the said taxes were accordingly, and only because of said requirement, paid by the State dispenser for himself and for each and every of said dispensers to the said collector, the same being paid out of the funds of said dispensaries, which funds were, and still are, the property of the State of South Carolina; that said payments were made without
7 the authority of any law of the State of South Carolina or of the United States, and were unauthorized by your petitioner; that the sums so paid to the collector of internal revenue as special taxes now amount to six thousand two hundred dollars, and that said money has been paid over by the said collector to the United States by its direction, and the same has been turned into its Treasury. Your petitioner accordingly avers that the money so paid by

the said dispensers being the money of the State, paid as aforesaid, without its authority, and without being liable to pay the same, was had and received by the United States to the use of your petitioner, and the same is legally and equitably now due and payable to your petitioner by the United States.

Wherefore your petitioner demands judgment against the United States for the said sum of six thousand two hundred dollars.

FRANKLIN H. MACKEY, *Attorney.*

DISTRICT OF COLUMBIA, *To wit:*

Franklin H. Mackey, being first duly sworn, deposes and says that he is the attorney for the petitioner above mentioned and has read the foregoing and annexed amended petition by him subscribed, and that he knows the contents thereof; that the matters and things therein alleged upon his personal knowledge are true, and those stated upon information and belief he believes to be true.

FRANKLIN H. MACKEY.

Subscribed and sworn to before me this 5th day of November, A. D. 1902.

GEORGE W. TAYLOR,
Notary Public.

[SEAL.]

8 III.—*Motion to Consolidate Case No.* 23100 *with Case No.* 22554.

Now comes the claimant by its attorney Franklin H. Mackey and moves the court to consolidate the case of The State of South Carolina *vs.* The United States No. 23100 with the case of The State of South Carolina *v.* The United States No. 22554.

FRANKLIN H. MACKEY,
Att'y for Claimant.

Filed and allowed December 20, 1902.

IV.—*Petition.*

Filed October 9, 1903.

STATE OF SOUTH CAROLINA
vs.
THE UNITED STATES. } No. 24085.

To the honorable chief justice and judges of the Court of Claims:

The petitioner, The State of South Carolina, herewith files its petition as follows:

I.

Your petitioner respectfully represents—

That by an act of the legislature of South Carolina approved December 24th, 1892, with subsequent amendments thereto, commonly known as the dispensary law, the sale of spirituous and malt liquors by private persons has been prohibited throughout
9 that State since the first day of July, 1893, when said act went into effect, and the authority to make sales thereof is confined exclusively to the State and county dispensers provided for by said act; said dispensers are, by said law, made the agents of the State for making sales of such liquors, which liquors are the property of the State, and the manner of sale is regulated by the said dispensary law; that the said liquors are sold by said dispensers only at appointed places in the State, known and designated as dispensaries, and the proceeds of said sales belong to the State; that by said dispensary law the said dispensers were, and are, prohibited from making, and they have not at any time made, any sales of spirituous or malt liquors other than of those belonging to the said State, and that all the profits and losses arising from the said sales accrue to the said State alone; that the said dispensers were, and are, salaried officers of said State, and never had any proprietary interest whatever in said liquors, nor in the profits or losses accruing from said sales, and that their salaries have never depended upon the amount of sales made by them; that the said dispensers were and are the State's appointed agents or instrumentalities to carry out its dispensary laws, which laws have for their purpose the control and the minimizing, as far as practicable, of the evils of the traffic in spirituous and malt liquors throughout that State; that said State exercises said control under and by virtue of its police power. Petitioner further avers that neither said dispensary officials nor said State are liable to pay any taxes, special or otherwise, to the United States under the revenue laws thereof, either as wholesale or as retail liquor dealers, and that they were not at any time, nor are they now, liquor dealers within the meaning of said revenue laws.

II.

That notwithstanding the premises, the United States col-
10 lector of internal revenue for the State of South Carolina has for each and every year since, and including, the year commencing the 1st day of July, 1901, refused to permit the said dispensers to make any sales of spirituous or malt liquors, as by the statutes relating to said dispensaries they were required to make unless, and until, each and every of said dispensers paid to the United States the special tax of twenty-five dollars a year imposed by the revenue laws of the United States upon retail liquor dealers, and he further required the State dispenser to pay in like manner for each and every year a special tax of one hundred and twenty-five dollars, the said collector claiming that said State dispenser was a wholesale, as well as a retail, dealer in liquors; and your petitioner says that the said taxes were accordingly, and only because of said requirement, paid by the State dispenser for himself and for each and every of said dispensers to the said collector, the same being paid out of the funds of said dispensaries, which funds were, and still are, the property of the State of South Carolina; that said payments were made without the authority of any law of the State of South Carolina or of the United States, and were unauthorized by your petitioner; that the sums so paid to the collector of internal revenue as special taxes now amount to four thousand dollars, and that said money has been paid over by the said collector to the United States by its direction, and the same has been turned into its Treasury. Your petitioner accordingly avers that the money so paid by the said dispensers being the money of the State, paid as aforesaid, without its authority, and without being liable to pay the same, was had and received by the United States to the use of your petitioner, and the same is legally and equitably now due and payable to your petitioner by the United States.

Wherefore your petitioner demands judgment against the United States for the said sum of four thousand dollars.

FRANKLIN H. MACKEY, *Attorney.*

DISTRICT OF COLUMBIA, *To wit:*

Franklin H. Mackey, being first duly sworn, deposes and says that he is the attorney for the petitioner above mentioned and has read the foregoing and annexed amended petition by him subscribed, and that he knows the contents thereof; that the matters and things therein alleged upon his personal knowledge are true, and those stated upon information and belief he believes to be true.

FRANKLIN H. MACKEY.

Subscribed and sworn to before me this 9th day of October, A. D. 1903.

[Seal Court of Claims.]

ARCHIBALD HOPKINS,
Chief Clerk, Court of Claims.

11 V.—*Order Consolidating Case No.* 24085 *with Cases* 22554 *and* 23100.

STATE OF SOUTH CAROLINA
v.
THE UNITED STATES. } No. 24085.

It is ordered that this case be consolidated with the cases between the same parties numbered 22554 and 23100.

BY THE COURT.

Filed February 29, 1904.

VI.—*Traverse.*

Filed by defendants Nov. 18, 1903.

In the Court of Claims of the United States, December Term, A. D. 1902–1903.

THE STATE OF SOUTH CAROLINA
vs.
THE UNITED STATES. } Nos. 22554, 23100, & 24085, Consolidated.

And now comes the Attorney General on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney General.

Filed Nov. 18, 1903.

VII.—*Argument and Submission.*

On the 17th and 18th days of November 1903 this case was argued and submitted.

12 VIII.—*Findings of Fact and Conclusion of Law.*

Filed February 29, 1904.

THE STATE OF SOUTH CAROLINA
v.
THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The General Assembly of the State of South Carolina passed an act, approved December 24, 1892, entitled "An act to prohibit the manufacture and sale of intoxicating liquors as a beverage within the State except as therein provided." This act has been amended by subsequent acts of said General Assembly.

The act of December 24, 1892, went into effect on the 1st day of July, 1893. In 1893 there were sixty-six dispensaries, and from time to time the number has increased until on the 1st of July, 1901, they numbered one hundred and one.

II.

For each and every year since, and including the year commencing the 1st day of July, 1893, the United States collector of internal revenue for the district of South Carolina has required the State dispensary commissioner and the county dispensers, in order that they may make sales of spirituous or malt liquors in accordance with the provisions of the dispensary laws of the State of South Carolina, to pay a special tax of $100 a year as a wholesale liquor dealer; and, in like manner, each of the county dispensers were required to pay a special tax of $25 a year as retail liquor dealers. These taxes were claimed and required to be paid by said collector upon the ground that the said dispensers were "liquor dealers" within the meaning of the internal-revenue laws of the United States, and as such were liable to pay said taxes.

Each dispenser, previous to receiving his special tax receipt, was required to file and did file with the collector a so-called "special tax return," the same being prepared upon a blank form prescribed by the Commissioner of Internal Revenue under the direction of the Secretary of the Treasury (R. S. U. S., 321) and known as form No. 11. The following is a copy (omitting the jurat) of said
13 special tax return as made out upon said form No. 11, all of these returns being alike except as to names and dates:

"United States internal revenue.

"*Return for Special Tax.*

"STATE OF So. Ca.,
"*County of Richland.*

"The undersigned, W. D. Price, being duly sworn according to law, declares that on the 1st day of July, 1900, he intends to engage in the business or occupation of retail liquor dealer, as county dispenser, subject to special tax under the internal-revenue laws of the United States; said business or occupation to be carried on at Columbia, in the county of Richland, State of So. Ca., and that he has done no business for which he would be liable to pay a special tax without having paid the same, except as above.

"W. D. PRICE."

III.

In compliance with the aforesaid requirement of the collector of internal revenue the State dispensary commissioner for each and every year respectively since and including the year commencing the 1st day of July, 1893, drew his warrant upon the State treasurer of South Carolina in favor of said collector for the special taxes claimed and demanded by him as aforesaid of the county dispensers and of the State dispenser.

IV.

Said warrants were thereafter paid by the State treasurer of South Carolina to the said collector, and the amounts of money so paid were by the latter paid into the Treasury of the United States as internal-revenue taxes.

The total of the amounts so paid and received by the United States from the year commencing July 1, 1895, to the year commencing July 1, 1901, both inclusive, is as follows:

Years.	Number of county dispensaries.	Total.
For the 1895	85, at $25 each	$2,125
" " 1896	90, " " "	2,250
" " 1897	90, " " "	2,250
" " 1898	93, " " "	2,325
" " 1899	92, " " "	2,300
" " 1900	94, " " "	2,350
" " 1901	101, " " "	2,801.02
Total paid by counties		$16,401.02
Total paid by State dispensers, $125 each		875
Amount of taxes paid for the years 1902 and 1903		5,564.59
Total paid by State and county dispensers		$22,840.71

V.

All of the liquor sold by the dispensary agents during said years was the property of the State of South Carolina, and all the profits and losses arising from said sales accrued to the said State. The dispensers never have had any proprietary interest of any sort in the liquors sold nor in the profits derived therefrom.

14 VI.

Among the regulations of the dispensary are the following:

"1. Liquors shall only be sold in sealed packages of not less than one half-pint or more than five gallons.

"2. The packages shall not be opened nor the liquor drunk upon the premises of the dispensary.

"3. Liquor shall not be sold to minors, nor intoxicated persons, nor persons in the habit of being intoxicated, nor to persons not personally known to the dispenser as a person of good character and habits, or upon the statement of a reliable and trustworthy person personally known to the dispenser that said person is of such character and habits.

"4. Liquors shall only be sold in the daytime, viz., from sunrise to sunset.

"5. They shall not be sold upon credit nor for barter.

"6. Not more than one sale a day shall be made to any one person.

"7. No label or device other than those furnished by the State dispensary shall be placed upon any package containing liquor."

VII.

Under the authority of and in pursuance to sections 3220 and 3227 of the Revised Statutes of the United States, the Secretary of the Treasury of the United States has prescribed for the use of persons making the appeal provided for by said sections certain forms, designated as form 38 and form 46. The following are copies of said forms, with the regulations or instructions issued by the Secretary of the Treasury in respect to form 46 printed thereon.

"United States internal revenue.

"*Claim for the Redemption of Stamps under Act of May 12, 1900, 'Authorizing the Commissioner of Internal Revenue to Redeem or Make Allowance for Internal-revenue Stamps.'*

"STATE OF ——, } ss:
County of ——, }

"—— ——, of —— State and county aforesaid, being duly sworn according to law, deposes and says that he is —— —— the claimant (If a member of firm, or officer of a corporation or an agent, state the fact) herein; that claimant was engaged in the business of —, and

upon the — day of ——, A. D. —, purchased from —— —— the internal revenue — stamp of the face value of —$\frac{}{100}$ dollars, herewith presented for redemption, and that the said claimant, (Insert name of actual owner of stamps) —— —— is now the *bona fide* owner of said stamp and justly entitled to reimbursement therefor. Deponent now asks and demands that the sum of —$\frac{}{100}$ dollars, being the face value of said stamp , less — per cent. discount, be refunded as provided in act of May 12, 1900, for the following reasons, viz.: (See Nos. 4, 5, 6 and 7 of instructions on page 3.)

15 "Deponent further says (see note A) that claimant has not heretofore presented any claim for the refunding of the above-mentioned amount or any part thereof; that the value or reimbursement of the value of said stamp or any portion thereof has not heretofore been received by claimant, directly or indirectly, and, further, that all articles subject to tax manufactured, issued, or sold by claimant were fully stamped, as required by law, and that the said claimant is not indebted to the United States in any amount whatever; and deponent further states that such stamp ha never been used otherwise than as above specified.

"—— ——,

"P. O. address: —— ——.

"Sworn to and subscribed before me this — day of ——, A. D. —.

"A. If a claim has been presented before, state the fact in lieu of this."

The following is a copy of form 46:

"*Claim under Series 7, No. 14, Revised, and Series 7, No. 27, Supplement No. 1 for Taxes Improperly Paid or Refundable under Remedial Statutes and for Amounts Paid for Stamps Used in Error or Excess.*

"U. S. internal revenue.

"STATE OF ——, "*County of* ——, } ss:

—— ——, of the * — of —— and State and county aforesaid, being duly — according to law, deposes and says that † —— that he w engaged in the business of —; that upon — day of ——, A. D. —, he w assessed an internal-revenue tax of — dollars, ‡ ——, which amount he afterwards, on the — day of ——, A. D., —, paid to —— ——, Esq., collector of internal revenue for

* Give post-office address.
† If a member of a firm, state the fact.
‡ State for or upon what the tax was assessed or the stamps affixed.

the — district of ——, and which amount, as this deponent verily believes, should be refunded for the following reasons, viz:

_____

_____

_____

And this deponent now claims that, by reason of the payment of the said sum of — dollars, he — justly entitled to have the sum of — dollars refunded, and he now ask and demand the same or such greater amount as the Commissioner of Internal Revenue may find to have been erroneously paid or to be refundable under remedial statutes; and this deponent further makes oath that he has not heretofore presented any claim for the refunding of the above amount or any part thereof.*

"—— ——.

"Sworn to and subscribed before me this — day of ——, A. D. 190–.

—— ——.

16 Then follow the "instructions," which contain, among others, the following:

"*Instructions in Regard to Preparation of Claim.*

"No. 1. All blank spaces provided in the claim, on page 1, and in the deputy collector's certificates, and collector's certificates on pages 2 and 4, must be properly filled.

"No. 4. In claims arising on account of special tax stamps it is not sufficient to state that the claimants have done no business for which they would be liable to special tax. Affidavits should be furnished containing specific denial as to each and all of the acts involving liability to special tax, as found in the statute imposing the tax; for instance, in the case of a retail liquor dealer: That from —— to —— he neither 'sold nor offered for sale any foreign or domestic distilled spirits, wines, or malt liquors in less quantities than five wine gallons at the same time.'

"No. 5. In cases where two special tax stamps of the same kind have been issued for the same period and place to the same person or firm, an affidavit as above should be furnished, adding thereto the words, '*except in one place* (or more, as the case may be), *for which he has paid the special tax required by law.*'

"No. 6. Where, in case of dissolution of a firm which had paid special tax, the remaining partner or partners have been required to pay new special tax for the unexpired portion of the time for which tax was paid by the original firm, and claim the refunding of the tax paid, it should be established that from —— to ——, the

* If a claim has been presented before, state the fact in lieu of this.

successor carried on the same business as the original firm, and that during such period no person, not a member of the original firm, was taken into partnership.

"No. 8. A claim for refunding should *he* made in the name of the party assessed, if living; if he is dead, there should be evidence of his death, and the claim should be made in the name of the executor or administrator. Certified copies of the letters of administration or letters testimentary, or other similar evidence, should be annexed to the claim to show that the claimant is administrator, etc.

The affidavit may be made by an agent of the party assessed; but, in such a case, there should be evidence of the agency, and of the sources of the agent's knowledge concerning the case in question.

VIII.

In the administration of these laws there has been established in the city of Columbia a wholesale department where all the liquors purchased by the State commissioner are kept and stored. From this wholesale department the various retail dispensers receive their supplies and sell them to the consumers as provided in the acts. All the liquors so purchased and sold are purchased from the funds of the dispensary account. Neither the State commissioner nor the city or county dispensers have any property interests, as persons, in said goods, the same being the property of the dispensary system. The profits arising from the sale of such liquors, after the payment of all expenses of every sort arising from the conduct of the business, are distributed as follows: One-half of said profits is equally divided between the municipality and the county in which
17 the dispensaries are located, the remaining one-half being paid into the State treasury. The profits arising from the sale of spirituous, vinous, and malt liquors under this dispensary system, and accruing to the counties, towns, and State, amounted in the year 1901 to the sum of $545,248.12, upon gross sales amounting to $2,328,681.21.

IX.

The total number of special-license stamps issued to wholesale and retail liquor dealers in the State of South Carolina by the United States internal-revenue collector for the district of South Carolina during the year 1902 was 372. Of this number 112 were issued to the State and county dispensers and 260 to private individuals, who pay to the United States internal-revenue collector their regular special license tax as retail liquor dealers, and for that purpose make application for the same on form No. 11 of the return for special tax, which is as follows:

"STATE OF ——, }
County of ——. }

"The undersigned —— ——, of the firm of —— ——, being duly sworn according to law, declares that on the — day of ——, 1902, he intends to engage in the business or occupation of retail liquor dealer, said firm consisting of the following-named persons, ——, ——, subject to the special tax under the internal-revenue laws of the United States; said business or occupation to be carried on at No. — —— street, in ——, county of ——, State of South Carolina, and that he has done no business for which he would be liable to pay a special tax without having paid the same, except as above."

This application is signed by the person engaged in the retail liquor business, and forms a part of the public records of the office of the internal-revenue collector for the district of South Carolina.

X.

On July 15, 1893, the State of South Carolina, by its governor, paid into the Treasury of the United States the sum of $25, and filed with the Commissioner of Patents, in conformity with the provisions of the act of Congress of 1881, and with the regulations prescribed by the Commissioner of Patents, a statement and declaration which began by stating that "the State of South Carolina, one of the Commonwealths comprising the United States of America, possessed in this regard of the full rights of a corporation, and doing business at its capital city of Columbia, in the county of Richmond, State aforesaid, has adopted for its use a trade-mark for chemically pure distilled liquors, consisting of the word 'palmetto,' and particularly described: was accompanied by facsimiles of the trade-mark; was supported by a declaration on oath of the governor of the State that he verily believed that the foregoing statement is true; that the State at this time has the right to the use of the trade-mark therein described; that no other person or firm or corporation has the right to use such, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the said trade-mark is used by the said State in commerce with foreign nations or Indian tribes, and particularly with Canada; and that the descriptions and facsimiles presented for record truly represent the trade-mark sought to be registered."

At the hearing before the Commissioner of Patents it appeared
that the trade-mark had been adopted by the State board of
18 control and that the State had sold in Canada a case of liquors with this trade-mark.

XI.

The payments made for said special license taxes were sometimes made to the United States internal-revenue collector in cash and

sometimes by warrant. When paid by the warrant the form thereof was as follows:

"State of South Carolina."

"No. 548.

"OFFICE OF STATE BOARD OF DIRECTORS,
"SOUTH CAROLINA STATE DISPENSARY,
"$1,950.00. "COLUMBIA, S. C., *July 6th*, 1900.

"The State treasurer of South Carolina:

"Under the State dispensary act, as per voucher on file in this office, pay to the order of E. A. Webster, collector, nineteen hundred and fifty dollars, on account of revenue license.

"H. H. CRUM,
"*State Commissioner.*"

The receipt for said payment was as follows:

"Twelve coupons, one for each month of the year, are annexed to this receipt."

"$25.00. No. —.
"Series of 1895. Series of 1895.

"United States
"Stamp for special tax,
"Internal revenue.

"Received from W. D. Price the sum of twenty-five dollars for special tax on the business of retail dealer in liquors, to be carried on at dispensary No. —, Columbia, State of South Carolina, for the period represented by the coupon or coupons hereto attached.

"Dated at Columbia, So. Ca.

"E. D. WEBSTER,
"$25.00. *Collector So. Ca. Dist.*

"Severe penalties are imposed for neglect or refusal to place and keep this stamp conspicuously in your establishment or place of business."

Prior to April 4, 1901, none of these payments were made under protest, nor was any objection made to the payment thereof. On April 4, 1901, the following protest was sent by the State dispensary commissioner to the United States internal-revenue collector for the district of South Carolina:

"OFFICE OF STATE DISPENSARY COMMISSIONER,
"SOUTH CAROLINA DISPENSARY,
"COLUMBIA, S. C., *April* 4, 1901.

"Hon. E. A. Webster, collector of internal revenue, Columbia, S. C.

"SIR: Pursuant to the advice of the attorney general of this State and of the board of directors of the State dispensary, I beg to
19 inform you that hereafter any applications for the issue of stamps for special taxes for wholesale or retail liquor dealers which may be sent to you by this office or any of the State or county dispensary officials, and the payment of moneys in pursuance of said applications, are made under protest that said applications and said payments are illegally required by you, and that neither the State of South Carolina nor any of its officials or agents are liable to pay any tax whatever, whether stamp taxes or otherwise, to the United States as wholesale or retail liquor dealers by reason of any sales of spirit-ous or malt liquors by the State and county dispensaries. The applications and the said payments are therefore made only because they are demanded by you and because to refuse compliance therewith might cause a conflict between the officials of this State and those of the United States.

"You are further informed that after said applications and payments shall have been made, that State of South Carolina, through its proper officials, will take such steps as may be found necessary, either in the courts or otherwise, to secure reimbursement of the moneys thus illegally demanded by and paid to you.

(Signed) "H. H. CRUM,
"*State Dispensary Commissioner.*"

XII.

No appeal or application for the repayment of the aforesaid sums paid by the various dispensers as wholesale and retail liquor dealers has been made by the State of South Carolina to the Commissioner of Internal Revenue, under the provisions of sections 3226, 3227, and 3228, Revised Statutes.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the petitions in the above-entitled cases be dismissed.

BY THE COURT.

IX.—*Opinion of the Court and Concurring Opinion.*

NOTT, Ch. J., delivered the opinion of the majority of the court.

This is believed to be the first case brought before a court in which a State has united in one undertaking an exercise of the police power with a commercial business. The exercise of the police power is by legislating and limiting the sale of intoxicating liquor; the commercial business is that of buying and selling such liquors for profit; the question involved is whether the dispensary agents of the State can be required to pay the special tax or license fee imposed on dealers in liquors by the internal-revenue laws of the United States.

The counsel of the United States has offered evidence to show, that the exercise of the police power, is little more than a disguise; and he has contended that the real purpose of the assumed exercise of the police power—the substance and not the form—must be considered; and that the real purpose of the South Carolina dispensary system is that of making money. The evidence offered shows, or tends to show, that there are 260 persons now selling intoxicants as retail dealers under United States internal-revenue licenses; that in the city of Columbia there are numerous places in the immediate neighborhood of the dispensaries, and within sight of the State capitol, where liquor is openly sold; that where the keepers of drinking saloons purchase from the dispensaries they are not prosecuted, and that when the business of selling at a profit was once interrupted, the State seriously contemplated abandoning the system. The counsel for the claimant, on the contrary, has produced evidence, to show that the consumption of intoxicating liquor in the State has been greatly reduced and the evils of intemperance consequently diminished; and he has contended that neither the violation of the law by individuals, nor the lax administration of it by State officers can be regarded as a part of the system, or as a sufficient reason why the exercise of the police power should be denied to the State.

It seems to us clear—it seems, indeed, incontrovertible—that in South Carolina, as elsewhere, a large portion of the people are honestly and earnestly in favor of the system for the single minded purpose of repressing the many evils of intemperance; that a portion of the people there, as elsewhere, reason no farther than that if intoxicants must be sold, and consequent drunkenness and crime must exist, it is fair that society, which has to support and bear the expenses incident to crime and pauperism, should receive the profits of the business rather than the individual vendors who, by their traffic, are the immediate cause of these evils. There is also in South Carolina, as elsewhere, a third class, who care little for the general welfare; whose motive is their own pleasure or profit; who do not believe in prohibition, and who evade and defy this law as other laws

for a similar purpose have been evaded and defied in other States. In the consideration of this case the court puts aside all of the evidence above referred to, and rests its decision exclusively upon what may be called the official record; that is to say, upon the statutes of the legislature and the action of the executive.

The commercial character of the State's undertaking is stamped unmistakably upon the system. The statute establishing it authorized a profit of 50 per cent., and contemplated large profits, directing the manner in which they should be utilized and distributed. As a matter of fact, the system has been a great commercial success, and has yielded large profits. In 1898, however, the system as a business was confronted by judicial interference in the form of an injunction which enjoined the State officers from interfering with the delivery and sale of liquor brought into the State from beyond its borders. The governor of South Carolina regarded the injunction as a blow possibly, if not probably, fatal to the system itself. In his annual message he brought the subject before the legislature, and said:

"Judge Simonton has destroyed, along with the dispensary, the license system *when run for profit*. What, then, is left to do? We must either enact prohibition or continue the dispensary system *without the profit feature*. Many, a majority, I believe, do not think prohibition is practicable; and many have approved the dispensary system *because of the profit feature*. We can certainly get rid of the 'original package' dealer and their demoralizing traffic by continuing the dispensary, *shorn of all profits and administered only as a police regulation to control and reduce the liquor evil*. The Federal judge will have neither occasion nor excuse for his ever-ready injunctions, *if that system shall be inaugurated*, unless he shall again re-
21 verse his own previous decision. This, then, appears to me to be the best and almost the only thing left for us to do. *We might try this policy for a year*, and next winter, after Congress shall have acted or failed to act, and after the Supreme Court at Washington shall have decided what is to become of the State's power to control liquor under the Wilson bill of 1890, we shall be in a position to take final action."

And in his annual message of the following year, he said:

"The dispensaries have been forced to fight free whiskey on terms of absolute equality; yet, strange to say, they have fought it successfully; *for while the profits were reduced by this lawless competition, there was still enough business to make the dispensary self-supporting and leave a small margin of profit.*"

The legislature apparently acquiesced in the suggestion of the executive in 1898 to "try this policy for a year," and allowed the system to continue; and it continued to do business and to make a profit upon its business, as shown by the above quotation from the message of 1899, notwithstanding that imported liquor was brought into the State and sold in the original packages. But before the year of probation expired the competition which the governor of

South Carolina deplored was largely, if not altogether, removed by the decision of the Supreme Court in Vance *v.* Vandercook (170 U. S. R., 438), wherein it was held that the purchaser within a State has the constitutional right to receive packages sent from another State for his own use, notwithstanding that there be State laws to the contrary, but that he can not sell in the original packages in defiance of State law. There was thus restored to the State substantially its monopoly of the sale of intoxicating liquors, and the business yielded a net profit in the year 1901 of $545,248.12.

The right of the State of South Carolina to carry on the business of its dispensary system exempt from the Federal excise tax is rested on one or the other of two general constitutional principles: That the dispensary system is an exercise of the police power of the State, beyond the interference of the General Government; that the National Government has no constitutional power to impose a tax upon the administrative agencies of a State government.

It will avail us nothing to appeal to the letter of the Constitution. The framers of the Constitution had before them during one hundred days of unapproachable constructive work three great purposes. The first was the construction of a new National Government. The second was the establishment of a dual system of government and the distribution of powers between the General or National Government and the local or State governments. The third was placing certain immutable restrictions upon the powers of government—restrictions which might apply to the National Government or the State governments, or to all, for the purpose of securing the individual rights of the citizen and making constitutional liberty perpetual and secure.

There are special provisions of the Constitution, such as that Congress shall have power to "coin money;" to secure to "authors and inventors the exclusive right to their respective writings and discoveries;" such as that no State shall "keep troops or ships of war in time of peace" or "enter into any agreement or compact with another State;" or "make anything but gold and silver coin a tender in payment of debts," or pass a law "impairing the
22 obligation of contracts;" such as that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State;" that the "citizens of each State shall be entitled to all privileges and immunities of citizens in the several States;" that "no preference shall be given to the ports of one State over those of another." But such provisions are always directly or indirectly in furtherance of one or the other or all of the three great purposes of the framers.

The statutory provisions, declarative and restrictive, by which the people of several States in recent constitutions have tied their representatives' hands, and their own, have no place in the framework of government established by the Constitution.

In the present constitution of South Carolina (1895), and in relation to this same dispensary system which is now before the court,

there is a statutory regulation or proviso "that no license shall be granted to sell alcoholic beverages in less quantities than one-half pint, or to sell them between sundown and sunrise, or to sell them to be drunk on the premises." In the three systems generally known as the "Swedish system" is one regarded as the most effective of the three, which, in the country and small villages, requires the liquor sold at a Government dispensary to be drunk on the premises, and prohibits its being carried away to inebriate the purchaser and destroy the peace and happiness of the home; yet the people of South Carolina have inhibited their representatives and themselves from even so much as trying that experiment. The framers of the Constitution attempted no such restrictive legislation, but left the people of the United States free to make their own laws and, by the proper discharge of the duties of citizenship, to work out their own political salvation.

Moreover, at the time of the adoption of the Constitution there probably was not one person in the country who seriously contemplated the possibility of government, whether State or National, ever descending from its primitive plane of a body politic to take up the work of the individual or body corporate. The public suspicion associated government with patents of nobility, with an established church, with standing armies, and distrusted all governments. Even in the high intelligence of the convention there were men who trembled at the power given to the President, who trembled at the power which the Senate might usurp, who feared that the life tenure of the judiciary might imperil the liberties of the people. Certain it is that if the possibility of a government usurping the ordinary business of individuals, driving them out of the market, and maintaining place and power by means of what would have been called, in the heated invective of the time, "a legion of mercenaries," had been in the public mind, the Constitution would not have been adopted, or an inhibition of such power would have been placed among Madison's amendments.

Accordingly, we find in the Constitution the power expressly delegated to the National Government to "lay and collect taxes, duties, imposts, and excises;" and the power expressly prohibited to the States, without the consent of Congress, to "lay any imposts or duties on imports or exports;" but no such restriction was laid upon either the National or State Governments in regard to the exercise of the police power. The police power is the power "to impose those restraints upon private rights which are necessary for the general welfare." It is a power inherent in all governments, needing
23 neither grant nor recognition in the Constitution. Without it civilized society in dense population would be constantly drifting back toward barbarism. In this country it can not be said to be wholly unrestricted, but the restrictions begin only where the exercise of it trenches upon the constitutional rights of individuals or of the States. It has been called an implied power, but is not, strictly speaking, an implied power, but an inherent power, which

is neither inhibited nor regulated by the Constitution. The cases which have come before the courts have generally been cases in which the exercise of the police power has trenched upon the constitutional rights of individuals or been in conflict with the reciprocal rights of the States to interstate commerce, or in which a State legislature has sought to do something in the disguise of an exercise of the police power which is prohibited by its State constitution. In this case no such conflict exists. The right of the State to regulate or prohibit the sale of intoxicants is conceded; the right of the State to do so in this particular way is not, in the opinion of the court, involved. The National Government, in effect, says to the State, "Exercise your police power as you will, but pay to the National Government a tax which is authorized by the Constitution and imposed by statute." The National Government does not interfere with the exercise of the police power; but the National Government can not be compelled, directly or indirectly, to aid it. The police power extends no further than the general welfare. The general welfare is one thing; exemption from taxation is another.

As regards the second ground upon which this suit rests, the ground that the Constitution contains no grant of power, express or implied, to tax a State or its means and instrumentalities of government, the court is aware of the decisions of the Supreme Court, which may be summed up in the income-tax case, that "As the States can not tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either the instrumentalities or the property of a State."—Pollock *v.* Farmers' Loan and Trust Company, 157 U. S. R., 429, 584.

But between the principle involved in those cases and the principle involved in this case there seems to the court to be three broad and plain distinctions:

The first distinction is fundamental. The money exacted here is not a direct tax but an excise. It was at the time of the adoption of the Constitution, and still is, the theory upon which the constitutional provision rests that an excise upon a salable article is paid by the purchaser. A tax is obligatory; from it there is no escape. An excise is voluntary; the purchaser who would pay it can not be compelled to purchase. As was said by Mr. Justice Brown in Pollock *v.* Farmers' Loan and Trust Co. (157 U. S. R., 429, 491), "direct taxes are paid by the taxpayer, both immediately and ultimately; indirect taxes are paid immediately by the taxpayer and ultimately by somebody else." The State of South Carolina here stands on precisely the same footing which every other dealer stands upon. All that it has to do is to add this internal-revenue excise to the price of the liquor which it sells and let the purchaser pay it. If there be exemption, it will not be the State which will be exempted from the payment of this excise, but the purchaser of liquor within the
24 State. That the increase of the price may invite smuggling and promote illicit selling and lessen the power of the State

as a dealer in the struggle of competition are objections, but they bear no more heavily on the State than on the individual dealer. These things add to his expenditures; they increase his prices; they lessen his sales; they impair his power to compete; but nevertheless in the contemplation of the Constitution and in the contemplation of the law it is the purchaser and not the dealer who pays the tax.

The second distinction is that in the income tax case of The Collector *v.* Day (11 Wall. 113) a tax had been extended to "a function strictly belonging" to a State "in its ordinary governmental capacity." (Ambrosini *v.* United States, 187 U. S. R., 1.) If, for illustration, the General Government were to tax the salaries of State officers, it would be taking money of the State by which it intended to procure the services of effective officers. It would be taking money which had been paid by the taxpayers of the State for carrying on the State government and which had been paid to the officers of the State for the necessary expenses of obtaining their official services. Raising money by taxation and employing salaried officers are ordinary instrumentalities of government. The exaction of an income tax from a State officer would be but a method of diverting the revenue of the State to the revenue of the General Government. It is manifest that if the General Government could take a part of the salary of a State officer through the instrumentality of taxation, and a State could take a part of the salary of a national officer, there being no limitation which the judiciary can impose upon the extent of the taxing power, there would be no limitation upon the retaliatory extent to which it could be pushed. In this case now before us the money exacted by the United States was not paid by the taxpayers of South Carolina, but by purchasers at its dispensaries; and it was not expended for ordinary governmental purposes, but as incident to carrying on its commercial business. The court does not question the power of the State to carry on this business, and does not doubt that the proceeds of the business lessen the taxes of the taxpayers. All that it decides is that the business of the dispensaries was, intrinsically, business and not government; and being business was subject to the same national tax which is borne by all other persons engaged in the same business.

The third distinction is that in the income-tax case of The Collector *v.* Day (11 Wall. R., 113) the money being raised for governmental purposes and expended for governmental purposes, the purposes, though not defined, were in their nature limited. Here, if the principle contended for is established, there seems no limitation upon the extent to which it can be carried. If the State, because it is a State, can buy and sell without being subject to the internal-revenue tax which is borne by other persons who buy and sell, at what point can it be held that exemption from taxation ceases? It is contended by many writers that the substitution of beer and wine for distilled liquors will satisfy the craving for alcohol on the one hand and relieve abnormal humanity from its vices and evils on the

other hand. If the State in the exercise of its police power should determine that an effective remedy for alcoholism would be the substitution of the light wines of Europe for whisky and brandy, would it be at liberty to import and claim exemption from customs duties? It is generally believed that many of the evils of alcoholism are caused by impurities in the liquor sold, by improper manufacture, by the mixing and flavoring which bring poisonous matter into the liquor. If the State, in the exercise of its police power, should deem it for the general welfare to furnish its citizens with pure distilled liquors, and for that purpose to manufacture as well as sell, would it be exempt from the distiller's tax? The amounts paid for licenses, set up in this suit, are trivial. The exaction of them will only theoretically affect the dealer's price, but the saving of the distiller's tax would, in effect, be an enormous bounty in favor of the State. The State could sell beyond its own borders, or at least could sell to its own citizens, who could sell beyond its own borders. To be able to sell free from taxation would be a power that would break down all competition wherever the State chose to compete. The more this subject is studied the more clearly it appears to the court that the State has a right to the exercise of its police power, and a right to the use of all proper instrumentalities of government, and a right to enter into this commercial business of buying and selling for a profit; but that none of these rights can be exercised as an evasion of the National Government's right to impose an excise tax and to subject all persons, whether States or private corporations or individual dealers, to the same law.

There are a number of minor questions in the case which were exhaustively argued by counsel on both sides, such as (on the part of the defendants) that the claimant should have presented its claim to the Commissioner of Internal Revenue for the remission of the tax as illegally collected; such as (on the part of the claimant) that the statute (14 Stats. L., p. 163, § 44) imposing this excise uses only the term "corporation," and was not intended to apply to a State. But it seems plain, if a State is a power above and exempt from the operation of the revenue laws, that it can not be compelled to resort to them for redress; and, conversely, that if a State is not a power constitutionally exempt from all national taxation in its commercial transactions, but is, like other persons and corporate bodies, subject to the conditions which the law imposes, the court can not read into the statute an exemption which is not needed by reasonable construction or by the ordinary principles of justice, and which will be an arbitrary departure from the plain, positive language of the statute. The great question in this case is whether the United States can impose an excise tax upon a State when the State carries on a commercial business for profit, a business which, in the hands of any other person or body corporate, will be subject to the terms and conditions of the Federal revenue laws. Not until the chief, the fun-

damental, question in the case is disposed of can a decision be intelligently given upon the minor questions presented.

The court has not overlooked the fact that in one instance a State was carrying on an ordinary commercial business, owning and operating a railroad, and that one court of the United States held that it was not intended that a State should be included in the requirements of this statute by the term "corporation" (State of Georgia *v.* Atkins, collector, 35 Ga. R., 315), and that the decision has been referred to in an indirect way by one of the judges of the Supreme Court (United States *v.* Railroad Company, 17 Wall. R., 322, 328). But this court is constrained to say that the magnitude of the present question was not presented to the court in Georgia and was not considered, and that the question involved there was not involved in the case in the Supreme Court, where all that was held was that a municipal corporation is a portion of the sovereign power of the State, and is not subject to taxation by Congress upon its municipal revenues. But, as was said by two of the dissenting judges in that case (p. 334), "it by no means follows that the private property owned by such corporation," "and used merely in a commercial sense for the income, gains, and profits, is not taxable just the same as property owned by an individual, or any other corporation." Such decisions as in The Republic of Honduras *v.* Soto (112 N. Y. R., 310) and Salt Lake City *v.* Hollister (118 U. S. R., 256) admonish us that such terms as "person" and "corporation" are broad enough in statutory construction to include the corporate side of a government or municipality. The principle which rules and guides is this: The exemptions of sovereignty extend no further than the attributes of sovereignty.

The judgment of the court is that the petition be dismissed.

WRIGHT, *J.*:

I concur in the conclusion but not in all that is said in the foregoing opinion.

26 X.—*Judgment of the Court.*

THE STATE OF SOUTH CAROLINA
vs.
THE UNITED STATES. } Nos. 22554, 23100, and 24085, Consolidated.

At a Court of Claims held in the city of Washington on the 29th day of February 1904 judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the defendants and do order adjudge and decree that the claimant's petition be dismissed.

BY THE COURT.

27 XI.—*Application for and Allowance of Appeal.*

THE STATE OF SOUTH CAROLINA
v.
THE UNITED STATES.
} Nos. 22554, 23100, and 24085, Consolidated.

From the judgment rendered in the above cause on the 29th day of February 1904, in favor of the defendants, the claimant by its attorney, on the 4th day of March 1904 makes application for, and gives notice of an appeal to the Supreme Court of the United States.

FRANKLIN H. MACKEY,
Attorney of Record.

Filed March 4, 1904.

Ordered. That the foregoing appeal of the claimant be allowed as prayed for.

BY THE COURT.

28 In the Court of Claims.

THE STATE OF SOUTH CAROLINA
vs.
THE UNITED STATES.
} Nos. 22554, 23100, and 24085, Consolidated.

I John Randolph assistant clerk of the Court of Claims, certify that the foregoing are true transcripts of pleadings in the above entitled cause, of the orders consolidating said cases—of the findings of fact and conclusion of law filed by the court, of the opinion of the court and concurring opinion, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 18th day of March A. D. 1904.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 19,274. Court of Claims. Term No. 210. The State of South Carolina, appellant, *vs.* The United States. Filed March 18th, 1904. File No. 19,274.